

JUN 7. 2006 3:55PM

FOLEY 8587926773

NO. 4930 P. 5

Atty. Dkt. No. SALK2190 (088802-5001)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: O'Gorman and Wahl
Title: SITE-SPECIFIC
RECOMBINATION IN
EUKARYOTES AND
CONSTRUCTS USEFUL
THEREFOR


Appl. No.: 08/919,501

Filing Date: 8/28/1997

Examiner: Michael C. Wilson

Art Unit: 1632

Conf. No.: 7493

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this correspondence is being facsimile deposited with the United States Patent Office in Alexandria, Virginia, on the date below. Stephen E. Reiter (Printed Name)  (Signature) June 7, 2006 (Date of Deposit)

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

UNDER 37 C.F.R. §1.705

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the patent term adjustment (PTA) of 769 days as indicated on the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) mailed on March 16, 2006. The total PTA should be adjusted by an additional 629 days, for a total of 1,398 days as determined below.

Upon review of the Patent Term Adjustment History as set forth in the Patent Application Information Retrieval (PAIR) database, it is noted that 629 days of PTO delay has not been properly credited to Applicants. This 629 days of delay is due to inaction by the PTO from June

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25, 2004 (4 months after the February 25, 2004 BPAI Decision in which the Examiner was reversed) until the mailing of the Notice of Allowance (on March 16, 2006).

According to the listing of "Available Documents" in the Image File Wrapper on PAIR, the only action taken by Applicants subsequent to the BPAI Decision was the resubmission, at the Examiner's request on July 13, 2004, of the earlier filed Reply Brief (initially submitted August 5, 2002). The Examiner's express request for a duplicate copy of the Reply Brief is documented in the attached "Telephone Conference with USPTO" dated July 13, 2004 (attached hereto as Exhibit A). Accordingly, Applicants provided the Examiner with a courtesy copy of the Reply Brief on July 13, 2004 in order to complete the Image File Wrapper, with respect to this ostensibly missing document. The fact that this is a resubmission of an earlier filed document is not reflected in the Image File Wrapper, wherein this document is erroneously identified as "Appeal Brief filed" (with a Mail Room date of July 13, 2004) in the "Available Documents" listing of the Image File Wrapper. Indeed, the filing of an Appeal Brief after the BPAI Decision in which the Examiner was reversed, would have been both improper and nonsensical.

Moreover, the original Reply Brief was timely filed on August 5, 2002. Indeed, entry of this Reply Brief was acknowledged by the Examiner in a communication mailed August 8, 2002 (a copy of which is attached hereto as Exhibit B). Accordingly, there would be no reason for Applicants to have resubmitted such a document (which was both timely-filed and entered by the Examiner) except at the Examiner's request.

Thus, there was no action taken by Applicants which could have excused the PTO delay. Therefore, PTA credited to Applicants properly accrues for the period of time beginning 4 months following the Decision by BPAI and ending with the mailing of the Notice of Allowance.

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Therefore, because the entire delay during that period of time is solely attributable to PTO delay, an additional 629 days of PTA should be properly credited to Applicants.

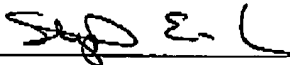
Therefore, the net Patent Term Adjustment should be 1,398 days, based on 769 days, as currently acknowledged on PAIR, plus an additional 629 days as noted above. Accordingly, it is respectfully requested that the total patent term adjustment of 1,398 days be issued in favor of the Applicants. This patent is not subject to a terminal disclaimer.

It is further requested that the fee of \$200.00 be waived in light of the above circumstances. However, if the Patent Office determines that the fee is required, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application for patent term adjustment can be achieved and the case can proceed to issuance without delay.

Respectfully submitted,

Date: June 7, 2006



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San Diego, CA 92138-0278

Attachments: Exhibit A: Telephone Conference with USPTO dated July 13, 2004
Exhibit B: USPTO communication mailed August 8, 2002

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NO. 4930 P. 8

TELEPHONE CONFERENCE WITH USPTO

Attorney Docket No: SALK 2190

Date: 7-13-04

Serial No: 08/919,501

Time: _____

Examiner: Mike Wilson

Telephone No.: 571-272-0738

Fax 571-273-0738

REGARDING:

Reply Brief filed after 6/2 - missing copy
Resend via fax

NOTES:

Faxed a copy of reply filed 8/5/04

FOLLOW-UP:

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/919,501	08/28/1997	STEPHEN O'GORMAN	SALK2190 (088802/5001)	7493

7590 08/08/2002
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EXAMINER

WILSON, MICHAEL C

ART UNIT PAPER NUMBER

1632

DATE MAILED: 08/08/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT B

PTO-90C (Rev. 07-01)